FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LDC/2020/0091**
HMCTS Code	**:**	**P:Paper remote**
Property	**:**	**10 Cherington Road, London, W7 3HJ**
Applicant	**:**	**Long Term Reversions (Harrogate) Ltd**
Representative	**:**	**Parkfords, Managing Agent**
Respondents	**:**	**(1) Rebecca Miller (Flat 1)** **(2) Nazleen Leontia Karim(Flat 2)** **(3) Michael O'Driscoll (Flat 3)** **(4) Nick Thomas (Flat 4)**
Representative	**:**	**In person**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal member	**:**	**Tribunal Judge I Mohabir** **Mr K Ridgeway MRICS**
Date of determination	**:**	**15 September 2020**
Date of decision	**:**	**15 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. 10 Cherington Road, London, W7 3HJ ("the property") is described as a property converted into 4 flats. Under the terms of the residential leases, the lessees are required to pay a maintenance charge contribution in respect of the "retained parts", which includes the conduits and common parts of the property.

3. The sewage pipe/drain at the property is operated by means of a sewage pump(s), which is accessed by a manhole cover located in the communal garden.

4. The present managing agent, Parkfords, were appointed in 2019 and placed a service contract with AES Rewinds ("AES") to repair and/or maintain the sewage pump(s).

5. On the first maintenance visit in or about the beginning of August 2019, AES recommended that the float brackets and the 24-volt lamps be replaced. In addition, a tanker/jetter should be present to empty and jet clean the chamber and, thereafter the engineer would test the pump(s). The estimate for the cost of the proposed works was £1,955.39 plus VAT.

6. By an email dated 13 August 2019, AES also recommended that the chamber condition was poor and required cleaning and provided a separate estimate of £855 plus VAT for the cost of a tanker/jetter to carry out this work.

7. On 16 October 2019, Parkfords commenced statutory consultation with the leaseholders by a serving a notice pursuant to section 20 of the Act of the intention to carry out the above proposed works. On 18 October 2019, the Fourth Respondent nominated his own contractor, SI Pumps Ltd, to tender for the works. It seems that nothing further was done in relation to the statutory consultation process regarding the proposed works.

8. On 28 May 2020, Parkfords emailed AES to urgently attend the property with a tanker to jet the drain because the manhole cover was

about to overflow. It appears that a tanker attended the property on or about 4 June 2020 to clear the drain.

9. Although the Tribunal was not told of the cost incurred, it is assumed that the cost was £855 plus VAT in accordance with the earlier estimate provided by AES. However, the Tribunal is not concerned with the actual cost of the work, as it is outside the jurisdiction of this application. It is only mentioned here because the cost had engaged the obligation on the Applicant to carry out statutory consultation with the Respondents before work was carried out. It is of note that the Respondents have separately made an application to the Tribunal challenging the reasonableness of service charges, but it is not known if the application relates to these or other service charge costs.

10. Subsequently, the Applicant made this application seeking retrospective dispensation from the requirement to carry statutory consultation. On 3 August 2020, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

11. All of the Respondents have objected to the application almost exclusively on the basis that historic neglect by the Applicant has resulted in the costs of the works carried out being unnecessarily incurred.

Relevant Law

12. This is set out in the Appendix annexed hereto.

Decision

13. The determination of the application took place on 15 September 2020 without an oral hearing. It was based solely on the statements of case and other documentary evidence filed by the parties.

14. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

15. The issue before the Tribunal was whether retrospective dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the drain works. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.

16. The Tribunal granted the application the following reasons:

(a) there was no evidence before the Tribunal that enabled it to make a finding that historic neglect on the part of the Applicant had led to the drain being defective.

(b) it appears to be common ground that the drain was defective and led to the real possibility of the manhole cover overflowing with the attendant health and safety risk posed to the Respondents.

(c) the Respondents' leases placed a positive repairing obligation on the Claimant to repair and/or maintain the drain and for it to do otherwise would potentially mean that it would be in breach of covenant and subject to a claim in damages. To this extent, it is perhaps surprising that Parkfords did not progress the statutory consultation process after 16 October 2019. Had they done so, then consultation could have been completed and the wider scope of the proposed works commenced.

(d) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred and they have done so by making the parallel service charge application under section 27A of the Act. it is in that application the arguments in relation to historic neglect may be pursued by the Respondents.

17. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the Applicant's failure to consult and the application was granted as sought.

18. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I Mohabir **Date:** 15 September 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.